
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Akundi et al.

Attorney Docket No.: CISC353/7974

Application No.: 10/721,571

Examiner: Truong, Thanhnga B

Filed: November 24, 2003

Art Unit: 2135

Title: DUAL MODE FIREWALL

Confirmation No.: 5786

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Signed: /Kristina Gomez/
Secretary

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Restriction Requirement dated June 14, 2007, Applicant hereby elects, **with** traverse, Species 1, claims 1-7 to prosecute in the above-identified patent application.

Applicant respectfully traverses the Restriction Requirement because the species are not independent or distinct from each other and the Examiner has not followed the M.P.E.P. requirements for making a restriction requirement.

The Examiner alleges that Species 1 is independent and distinct from Species 2 because each of the species details a mutual exclusive characteristic of: "i. A firewall comprising a first port, a second port, and a third port for communication with first device and second device first network and second network. ii. A method and computer program of implement a firewall for receiving the packets." These species, however, are not mutually exclusive.

Specifically, the Examiner has conveniently omitted several elements from claim 1 in the description of the species. In addition to the elements stated in the description, claim 1 additionally includes:

at least one processor configured to:

determine that a first portion of the incoming packets should be bridged, the first portion having a first source address and a first destination address within the first network;
apply a first screening process to the first portion;
determine that a second portion of the incoming packets should be routed, the second portion having a second source address or a second destination address outside the first network; and
apply a second screening process to the second portion.

These elements are nearly identical to the steps recited in claim 9. This substantial overlap between the species evidences the fact that the species are not independent or distinct.

Furthermore, the Examiner has failed to follow the M.P.E.P. requirement for making a restriction requirement. First, the Examiner has failed to identify generic claims or indicate that no generic claims are present. M.P.E.P. 809.02(a) requires that "Where restriction between species is appropriate... Action as follows should be taken: (A) Identify generic claims or indicate that no generic claims are present." By failing to do so, the Examiner has failed to meet the burden required by the M.P.E.P. and the rejection is improper.

Furthermore, even if it is assumed that the species are independent and distinct under some analysis under M.P.E.P. 806.05(c) - 806.06, the species clearly are related and are thus the restriction is subject to the requirements of M.P.E.P. 808.02, which states:

Where the invention as claimed are shown to be independent or distinct under the criteria of M.P.E.P. § 806.05(c) - § 806.06, the examiner, in order to establish reasons for insisting upon restriction, must explain why there would be a serious burden on the examiner if restriction is not required. Thus, the examiner must show by appropriate explanation one of the following: (A) Separate classification thereof... (B) A separate status in the art where they are classifiable together...(C) A different field of search.

Here the Examiner has failed to state any reasons why there would be a serious burden on the examiner if restriction is not required. Indeed, since the Examiner has already undertaken a search for all the claims and issued a first office action on the merits, Applicant fails to see how the Examiner can argue that a search would be overly burdensome. This is especially true in light of the fact that no claims have been amended since the original search. The Examiner clearly wasn't overly burdened by the conducting of the original search. Applicant also notes that all of the claims were rejected by the examiner in the first office action using the exact same

prior art, clearly evidencing the Examiner's opinion that the same prior art applies to both "species."

For the above reasons, Applicant respectfully submits that the restriction requirement is improper and requests that it be withdrawn.

If any fees are due in connection with the filing this Response to Restriction Requirement, the Commissioner is hereby authorized to charge such fees to Deposit Account 500388 (Order No. CISC353).

Respectfully submitted,
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